

HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC., a Delaware corporation,
Plaintiff,

v.

JOSHUA FISHER, JACOB W. MAHURON
A/K/A "PRAGMATIC TAX," MATTHEW
ABBOTT A/K/A "NOVA," JOSE
DEJESUS AKA "DAVID HASTINGS"
A/K/A "J3STER," TRAVERS RUTTEN
A/K/A "TRAVERS7134," JESSE
WATSON A/K/A "JESSEWATSON3944,"
JOHN DOE NO. 1 A/K/A "CALC",
ANDREW THORPE A/K/A "CYPHER,"
RYAN POWER AKA "KHALEESI," JOHN
DOE NO. 4 A/K/A "GOD," JOHN DOE
NO. 5 A/K/A "C52YOU," JOHN DOE NO.
6 A/K/A "LELABOWERS74," JOHN DOE
NO. 7 A/K/A "FRAMEWORK," KICHING
KANG A/K/A "SEQUEL," JOHN DOE
NO. 9 A/K/A "1NVITUS," DAVID
BRINLEE A/K/A "SINISTER," JOHN DOE
NO. 11 A/K/A "THEGUY," JOHN DOE
NO. 12 A/K/A "BEATRED," JOHN DOE
NO. 13 A/K/A "COMMUNITYMODS,"
JOHN DOE NO. 14 A/K/A "PALACE,"
JOHN DOE NO. 15 A/K/A
"VINCENTPRICE," JOHN DOE NO. 16
A/K/A "ESSWAN," JOHN DOE NO.
17 A/K/A "ADMIRAL," JOHN DOE NO. 18
A/K/A "TOMDICKHARRY," JOHN DOE
NO. 19 A/K/A "ROB," JOHN DOE NO. 20
A/K/A "STAYLOCKED," JOHN DOE NO.

Case No. 2:23-cv-01143-MLP

PLAINTIFF BUNGIE, INC.'S *EX PARTE*
FOURTH MOTION FOR AN EXTENSION
OF THE SERVICE DEADLINE UNDER
RULE 4(m)

NOTE ON MOTION CALENDAR:
September 13, 2024

21 A/K/A “FIVE-STAR,” JOHN DOE NO.
 22 A/K/A “HORROR,” JOHN DOE NO. 23
 A/K/A ELITECHEATZ.CO, JOHN DOE
 NO. 24 A/K/A MIHAI LUCIAN, JOHN
 DOE NO. 25 A/K/A NATHAN BERNARD,
 A/K/A “DOVE,” JOHN DOE NO. 26
 A/K/A “BLACKMAMBA,” JOHN DOE
 NO. 27 A/K/A “BILLNYE,” JOHN DOE
 NO. 28 A/K/A “BANEK192,” JOHN DOE
 NO. 29 A/K/A SHOPPY ECOMMERCE
 LTD, JOHN DOE NO. 30 A/K/A/ FINN
 GRIMPE A/K/A “FINNDEV,” AND JOHN
 DOES NO. 31-50,
 Defendants.

Plaintiff Bungie, Inc. hereby moves for an additional 60-day extension to the Rule 4(m) deadline for Bungie to serve domestic Defendants in order to permit Bungie to complete the process of identifying and locating such Defendants.

I. INTRODUCTION

Bungie is the owner and developer of the massive multiplayer online video game shooter *Destiny 2*. Defendants develop, sell, market, and support cheat software targeted to attack *Destiny 2*. *See generally* Dkt. 54. Recognizing that Defendants have deliberately obscured their identities and locations, this Court granted Bungie’s requests for third-party discovery on November 29, 2023 and April 24, 2024. *See* Dkts. 27, 51. Bungie moved for a third and final round of third-party discovery on August 23, *see* Dkt. 58. Bungie has sent every subpoena the Court permitted it to send. Additionally, Bungie amended its complaint to encompass what it has discovered, *see* Dkt. 54, after the Court granted it leave to do so, *see* Dkt. 53.

Bungie is prepared to serve its final wave of subpoenas as soon as it is given permission to do so. *See* Dkts. 58-60. Bungie has also sent or re-sent Rule 4 waiver requests with the Amended Complaint to every Defendant it has identified. Declaration of Dylan Schmeier ¶ 6. Bungie is not expecting responses to most of those waiver requests, as it did not receive any for the round it sent with the initial complaint, and is preparing to move forward with formal service wherever possible. *Id.* Bungie is also preparing to move for alternative service for those

1 Defendants it has not been able to pin down to an address. *Id.* at ¶ 7. Bungie needs the
2 productions from its requested final round of subpoenas, and a brief period to analyze those
3 productions, in order to ensure that the request for alternative service only encompasses those it
4 cannot serve by traditional means. *Id.* Once alternative service is sought and identified U.S.
5 Defendants who do not respond to Rule 4 waiver requests are served, Bungie can move forward
6 with service on international Defendants while moving forward with the served Defendants.

7 Therefore, Bungie seeks an extension of 60 days to the Rule 4(m) deadline from the
8 issuance of the Court's Order on this Motion.

9 **II. FACTUAL BACKGROUND**

10 On October 27, 2023, Bungie filed a motion seeking third-party discovery to unmask
11 anonymous defendants for service of process. Dkt. 24. The Court granted that motion in part on
12 November 29, 2023. Dkt. 27. Eighteen subpoenas were served in accordance with the Order.
13 Dkt. 29 at ¶ 10. On April 9, 2024, Bungie filed a second motion seeking further third-party
14 discovery, Dkt. 40, which the Court granted on April 24th, Dkt. 51. Six subpoenas were served
15 in accordance with that Order. Schmeier Declaration ¶ 5. Bungie filed a third motion seeking a
16 final round of third-party discovery on August 23rd, which is currently pending. Dkt. 58.

17 Bungie has also sent Rule 4 waiver requests with its Amended Complaint to the
18 Defendants it has identified, including those who previously received such requests for the
19 original complaint. Schmeier Declaration ¶ 6. Bungie will afford reasonable time to respond,
20 though it is prepared to promptly press forward with formal service or requests for alternative
21 service given that one of the only two responses it has received to the original waiver requests
22 instructed counsel to take this lawsuit and "stuff it". Dkt. 56 at ¶ 8. Bungie wishes to formally
23 serve everyone it can, thereby making its alternative service requests as narrow as possible and
24 only where necessary due to an inability to locate an address for a Defendant through Bungie's
25 ongoing investigation and permitted third-party discovery. As such, Bungie needs the
26 productions from its final round of subpoenas that are the subject of its pending motion to
27 finalize its list of Defendants who cannot be served by traditional means. While every effort was

made to avoid the need for an additional service deadline extension given the Court’s prior grant of a generous 90-day extension, Bungie did not receive the final production from prior subpoenas until August 1, due to Discord’s innocent confusion that delayed its production by weeks. Schmeier Declaration ¶¶ 8-11. Bungie required time to process this voluminous production to finalize and render precise its August 23rd motion for a final round of third-party discovery. *Id* at ¶ 11.

Bungie therefore submits that there is good cause to extend the Rule 4(m) deadline, currently set at September 25th, by a further 60 days to allow the final third-party discovery Bungie has requested to reach its conclusion, and to allow it to organize its service of process, or its motions for alternative service, for currently identified Defendants. Bungie anticipates that its next filings pertaining to service will be its requests for alternative service and its affidavits of service (or Rule 4 waivers should any be received), so long as it has obtained the final productions it seeks. This case can then proceed.

III. LEGAL ARGUMENT

Rule 4(m) states that a court “must extend the time for service for an appropriate period” where the plaintiff shows good cause for an inability to serve a defendant within 90 days of filing the complaint. FED. R. CIV. P. 4(m). *See also Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007) (“Rule 4(m) . . . requires a district court to grant an extension of time when the plaintiff shows good cause for the delay.”) (emphasis omitted). A showing of good cause may involve various factors, such as the lack of prejudice to defendant and the significant prejudice to plaintiff if the extension were not granted and the complaint was dismissed, and the defendant’s receipt of actual notice of the lawsuit. *See, e.g., Efaw*, 473 F.3d at 1041; *Madrid v. Adkins*, No. C19-1710 JLR-TLF, 2020 U.S. Dist. LEXIS 173154, *6, 8 (W.D. Wash. Aug. 20, 2020), *report & recommendation adopted by* 2020 U.S. Dist. LEXIS 186681 (W.D. Wash. Oct. 6, 2020); *Hoefler v. Apple Wash. LLC*, No. C17-1369 RAJ, 2018 U.S. Dist. LEXIS 216863, *5-6 (W.D. Wash. Dec. 27, 2018). Upon a showing of good cause for the lack of service, the district court must extend the time period for service. *In re Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001).

1 Even absent a showing of good cause, the court still has “the discretion to dismiss without
2 prejudice or extend the time period.” *Id.* (citing *Petrucelli v. Bohringer & Ratzinger, GMBH*, 46
3 F.3d 1298, 1305 (3d Cir.1995)).

4 The Ninth Circuit has also concluded that Rule 4’s timing requirement for service is
5 “inapplicable to service in a foreign country[.]” *Lucas v. Natoli*, 936 F.2d 432 (9th Cir. 1991)
6 (per curiam). Thus, where it appears defendants may need to be served in foreign countries, the
7 time limit for service in Rule 4(m) does not apply. *Amazon.com Inc. v. Awns*, No. C22-402-MLP,
8 2022 U.S. Dist. LEXIS 185807, *2 (W.D. Wash. Oct. 11, 2022). However, “[d]espite the lack of
9 an express time limit, Rule 4(m) does not preclude the court from setting a reasonable time limit
10 for service in a foreign country to properly manage a civil case.” *Id.* (internal quotation marks
11 omitted). Bungie has not completed its investigation into the Unidentified Defendants and does
12 not fully know which are residents of the United States and which reside in a foreign country,
13 although many are believed to be domiciled abroad. Dkt. 56 at ¶ 4. Bungie is in the process of
14 affecting service, by waiver or formal service, of the U.S. Defendants it has been able to locate.
15 *Id.* at ¶ 5. Bungie has sent Rule 4 waiver requests to the Defendants it has identified. Schmeier
16 Declaration ¶ 6. To the extent that any are residents of a foreign country, no time limit has yet
17 been set, and Bungie will pursue serving them, once they are identified, in the same manner as it
18 is pursuing foreign Defendants it has already identified and located. *See* Dkt. 26 at ¶¶ 4-5;
19 Dkt. 41 at ¶ 6.

20 Bungie has good cause for having not yet served the remaining unserved domestic
21 Defendants: Namely, that Bungie doesn’t know who they are yet, whether they are in fact in the
22 United States or in a foreign country, the address of their primary residence, or any other contact
23 information sufficient to affect service. Where Bungie has, through its diligent investigative
24 efforts, identified Defendants and ascertained that they are U.S. residents, it has served those
25 Defendants or sent them Rule 4 waiver requests, though none have yet appeared in this case.
26 Schmeier Declaration ¶ 6; *see also* Dkt. 26 at ¶¶ 4-7; Dkt. 41 at ¶¶ 5-6; Dkt. 56 at ¶¶ 5-10.
27 Further, Bungie has, with the Court’s permission, issued two waves of subpoenas to third parties

1 to identify, locate and affect service on the remaining Unidentified Defendants. While more
 2 Does have been discovered, and the Court has granted leave that they be amended into the
 3 complaint, a number of them remain unidentified.¹ More time to identify and serve these
 4 Unidentified Defendants, whether they are foreign or domestic, is required for Bungie to
 5 conclude its investigation and execute service.

6 There is no undue prejudice to the Unidentified Defendants if such an extension were
 7 granted. The extension is necessary to allow time for Bungie to (1) either identify Defendants so
 8 they may be served or so Bungie may exhaust its efforts to do so, and (2) move for alternative
 9 service of the identified Defendants that Bungie is ultimately unable to obtain a physical address
 10 for. Bungie, on the other hand, would be significantly prejudiced, as the Unidentified Defendants
 11 could continue their tortious conduct (and potentially add new or additional layers of anonymity
 12 to avoid identification) while Bungie continued to toil to identify them, functionally rewarding
 13 them for obfuscating their identities. This delay would not negatively impact the orderly progress
 14 of the case. The additional 60 days is solely to allow Bungie time to complete its efforts to
 15 identify and locate the Unidentified Defendants, or so it can determine which Defendants it will
 16 need to seek alternative service for. Further, the reason for the delay is largely, if not entirely, out
 17 of Bungie's control. Any delay is due in significant part to the Defendants' ongoing attempts to
 18 conceal their identities. *See, e.g.*, Dkt. 25 at ¶¶ 5-15. The potential but heretofore unknown
 19 foreign residence of many Unidentified Defendants has further complicated and delayed efforts
 20 to identify, locate, and serve them. Finally, Bungie has acted diligently and in good faith in
 21 promptly pursuing multiple avenues of discovery and investigation – including the pursuit of
 22 third-party discovery via 24 subpoenas so far with 6 or more hopefully to come – intended to
 23 identify, name, and serve Defendants. *See, e.g., Vanleeuwen v. Keyuan Petrochemicals, Inc.*, No.
 24 CV 11-9495 PSG (JCGx), 2013 U.S. Dist. LEXIS 121976, *13-14 (C.D. Cal. Aug. 26, 2013)

25
 26 ¹ Since filing its Amended Complaint, Bungie has been successful in identifying and locating
 27 some of the Doe Defendants and has requested issuance of summons to serve those Defendants.
See Dkts. 61-64.

(difficulty in locating defendant and plaintiffs' attempts to locate defendant through discovery supported the conclusion that plaintiffs acted in good faith).

If the Court concludes that this is not good cause requiring an extension under the mandatory language of Rule 4(m), it should still exercise its discretion and grant the extension in the interest of judicial efficiency. Bungie has invested considerable time and resources into determining the obfuscated identities of the Defendants, to some success – Bungie believes it has identified the majority. Bungie has pursued the third-party discovery the Court has allowed it to, and is merely awaiting the remaining productions of the final round it has sought in its pending motion to make final decisions as to service. These productions will allow it to either identify and locate the Unidentified Defendants for traditional service or to identify the next steps that are necessary to request alternative service. Absent a grant of more time, it is conceivable that other U.S. Defendants could be dismissed from this suit, without prejudice, for lack of service. Bungie's efforts to identify them would not cease, however, and once they were identified, Bungie would sue them again once their names and addresses were discovered. Allowing more time for Bungie to complete the limited third-party discovery it has sought now, so this can be accomplished on a reasonable timeline without these additional steps, is the most efficient path.

IV. CONCLUSION

For the foregoing reasons, Bungie respectfully requests that the Court extend Bungie's deadline to serve Defendants by 60 days from the date of the order on this Motion.

Dated this 13th day of September, 2024.

Respectfully submitted,

KAMERMAN, UNCYK, SONIKER &
KLEIN, P.C.

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WORD LIMIT CERTIFICATION

I certify that this memorandum contains 2,089 words, in compliance with the Local Civil Rules.

By: s/ Stacia N. Lay
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